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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,309	10/12/2006	Yuichi Ohkawara	2006_1287A	8154

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EXAMINER	
BROWN, COURTNEY A	
ART UNIT	PAPER NUMBER
1616	

NOTIFICATION DATE	DELIVERY MODE
04/01/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ddalecki@wenderoth.com
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Office Action Summary	Application No.	Applicant(s)	
	10/590,309	OHKAWARA, YUICHI	
	Examiner	Art Unit	
	COURTNEY BROWN	1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-13* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-13 are pending.

Restriction

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I

Claims 1-8 drawn to an insecticide composition and a method for controlling an insect pest which comprises applying said insecticide composition to locations other than the site where the insect pest inflicts injuries directly .

Group II

Claims 1-7 and 9, drawn to an insecticide composition and a method for controlling an insect pest characterized in that said method comprises mixing two kinds of compounds.

Group III

Claims 1-7 and 10, drawn to an insecticide composition and a method for controlling an insect pest characterized in that said method comprises growing seedlings with use of the soil for

raising seedlings which has contained therein two kinds of compounds of formula I and formula II .

Group IV

Claims 1-7 and 11, drawn to an insecticide composition and a method for controlling an insect pest characterized in that said method comprises applying two kinds of compounds of formula I and formula II to the soil of a farm field through drenching treatment, plant-hole treatment, planting-hole treated soil incorporation, plant-root treatment or plant-root treated soil incorporation during the period ranging from the seeding planting time to the vegetation period for a crop to be cultivated by the seedling-planting method.

Group V

Claims 1-7 and 12, drawn to an insecticide composition and a method for controlling an insect pest characterized in that said method comprises effecting the immersion treatment, dusting treatment or coating treatment of seed, seed potato or bulb with two kinds of compounds of formula I and formula II .

Group VI

Claims 1-7 and 13, drawn to an insecticide composition and a method for controlling an insect pest characterized in that said method comprises treating the soil of a farm field with two kinds of compounds of formula I and formula II through drenching treatment, plant-root treatment or plant-root treated soil incorporation during the vegetation period for a crop to be cultivated by directly sowing or seeding a seed, seed potato or bulb on the farm field.

The inventions listed as Groups I- VI do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: the common technical feature in all groups is a an insecticide composition which comprises **one or not less than** two kinds of compounds selected from a compound represented by the formula [I] and a neonicotinoid compound represented by the formula [II]. This element does not constitute a special technical feature under PCT Rule 13.2 because the element is shown in prior art. WO 03/015519 A1 teaches compounds of instant formula I in compositions used for control of invertebrate pests (page 2, lines 1-21) The invention of the instant application lacks a special corresponding technical feature and does not make a contribution to the prior art. Therefore, the claims cannot be said to have unity of invention.

Election/Restriction

Claim 1 is generic to the following disclosed patentably distinct species of the compound of formulas I and II:

1.) the compound of formula I wherein X=C and A+B in compound I is 1, 3, 5 oxadiazole;

2.) the compound of formula I wherein X=C and A+B in compound I is 1, 3, 5 triazine;

3.) the compound of formula I wherein X=C and A+B in compound I is 1, 3 thiazole;

4.) the compound of formula I wherein X=C and A+B in compound I is imidazole;

5.) the compound of formula I wherein X=N and A+B in compound I is 1, 3, 5 oxadiazole;

6.) the compound of formula I wherein X=N and A+B in compound I is 1, 3, 5 triazine;

7.) the compound of formula I wherein X=N and A+B in compound I is 1, 3 thiazole;

8.) the compound of formula I wherein X=N and A+B in compound I is imidazole

Accordingly, Applicants are required to elect a single disclosed deactivating compound to be chosen from the list above.

The species are independent or distinct because the different species have mutually exclusive characteristics for each identified species. In addition, these species are not obvious variants of each other.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

This application contains claims directed to the following patentably distinct species: a deactivating compound. The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claim **1** is generic.

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search

queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141.

A telephone call was made to Warren M. Cheek on March 4, 2010 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Conclusion

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR Only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Examiner Courtney Brown, whose telephone number is 571-270-3284. The examiner can normally be reached on Monday-Friday from 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Courtney A. Brown
Patent Examiner
Technology Center1600
Group Art Unit 1616

/Ernst V Arnold/
Primary Examiner, Art Unit 1616